WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
FINAL TRANSPORTATION ORDERS
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September 27, 2002

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,

Complainant,

v.

OLYMPIC PIPE LINE COMPANY,

Respondent.

DOCKET NO. TO-011472

ORDER REJECTING PROPOSED TARIFFS; REQUIRING REFILING

When a party fails to present sufficient evidence to support its case in a matter in which it bears the burden of proof, but other parties' evidence in the proceeding enables the Commission to reach a decision, the Commission may decide the matter on all the evidence of record. ¶¶39-46; 86-88.

When a party has the burden to prove matters at issue, the party must present sufficient reliable and credible evidence to establish a *prima facie* case. Evidence that is not reliable or credible does not support the party's burden of proof. ¶43

Commission decisions on whether an interim rate increase is needed are made on an expedited schedule and a limited record. The findings of fact and conclusions of law based on that limited record and limited argument do not determine the findings or conclusions that are proper after a hearing on the merits of the general rate request. ¶¶47-50.

In setting rates for petroleum pipeline companies regulated under Title 81 RCW, the Commission may use any standard, formula, method or theory of valuation reasonably calculated to determine rates that are fair and just reasonable to a company under “honest, efficient and economical management.” RCW 81.04.250, ¶¶51-52.

Neither an “end result test” nor a “public interest test” justify deviation from traditional ratemaking methodology when the Commission determines upon the facts of record that the result of applying the methodology results in rates that are fair, just, reasonable, and sufficient. ¶¶54-57.

The Commission’s responsibilities as a regulator of pipeline safety do not demand that it depart from traditional Washington State ratemaking methodology in determining pipeline rates, as applying the methodology provides adequate funding for all demonstrated safety-related needs and results in rates that are fair, just, reasonable, and sufficient. ¶¶58-60.

Federal law does not require Washington State to set intrastate petroleum pipeline rates at the same level as interstate rates. ¶¶62-64.

So long as the Commission authorizes rates that are fair, just, and reasonable by any methodology allowed by statute, investors have no right to any particular methodology. *P.O.W.E.R. v. WUTC*, 104 Wn.2d 798 (1985), ¶69.

When the Commission allows a rate filing to become effective without suspending it, the Commission does not "approve" the tariff or any of the methodologies that produced it or the filing company's unstated underlying assumptions relating to the filing. The Commission cannot establish rates without a hearing. *RCW 81.04.230*. ¶71.

The Commission's failure to suspend a company's tariff filings does not give rise to estoppel against the Commission's subsequently establishing fair, just, and reasonable rates for the company that are based on a methodology different from the methodologies supporting the filings that became effective. ¶¶74-78.

Absence from the record of financial reports supported by an unqualified certification by a licensed auditor is not an absolute barrier to the determination of rates if the record does contain sufficient information of the company's operations to support a Commission decision. ¶84.

Compliance with generally accepted accounting principles (GAAP) or with a regulatory uniform system of accounts (USOA) for reporting purposes does not automatically satisfy the Commission's need for information for ratemaking purposes, which is aimed at producing a reasonable match between costs and revenues. ¶85.

Company financial information must meet a minimum standard of reliability to qualify as credible and usable for purposes of setting rates. Among other indicators, witnesses and auditors must be able to trace individual items of revenue and expenditure from inception to recording, must be able to verify the purpose and classification of expenditures, and must verify that entries conform to the standards for the entries in areas such as accrual. ¶87.

The nature of oil pipelines as businesses with high fixed costs and relatively low operating costs, subject to competitive entry by other pipeline companies, and able to exit business at will, is not fundamentally different from other regulated utilities such as electric companies and wireline telephone companies and does not support use in Washington State of a rate setting methodology used in federal proceedings by the Federal Energy Regulatory Commission ("FERC"). ¶¶93-96.

When a carrier fails to produce evidence that it is subject to losing business to competitive modes of transportation, it fails to demonstrate that the existence of competition supports use in Washington State of a rate setting methodology used in federal proceedings by the FERC. ¶97.

The history of the economic regulation of oil pipelines at the federal level provides no support for the application of FERC principles in setting rates for Washington State intrastate service by oil pipeline companies, which is regulated under a statutory standard established in Washington State law. ¶¶99-102.

Consistency between Washington intrastate pipeline rates for transporting petroleum products and rates for interstate traffic set by the FERC as a controlling factor in setting rates is not supported by sound ratemaking policy. ¶¶103-105.

Trended Original Cost (“TOC”) methodology, used by the FERC to set rates for oil pipeline companies, is not shown to be appropriate for setting rates for Washington State intrastate petroleum product traffic. ¶¶111-113.

Use of a “starting rate base” ascribed to an earlier period is inappropriate when the company seeking it did not book the entry in its own records and did not seek or receive authority from the Commission to use it for ratemaking purposes. ¶116.

Consideration of deferred returns from prior periods is impermissible when the company seeking recognition of the deferral did not book it or ask or receive approval from the Commission for the deferrals. Allowing the deferrals would violate principles of retroactive ratemaking. ¶¶116–120.

The depreciated original cost methodology, applied by the Commission in many proceedings and affirmed on judicial review, is appropriate for use in setting rates for the intrastate transportation of petroleum products by pipeline, pursuant to RCW 81.04.250. ¶124.

A test year consisting of the most recent 12-month period for which reliable financial information is available is appropriate for use in setting pipeline company rates. ¶130.

A company wishing separate treatment of “regulatory costs” must establish an accounting mechanism that will allow it to identify and support the classification of specific expenditures, track them through its accounting system, and verify the expenditures. A request for separate treatment without the separate identification and verification will be denied. ¶135.

"Transition costs" occurring prior to the test year that result from a new majority owner's decision to substitute its own management for prior management are not timely considered, are not recurring business costs relating to continuing activity, and are not shown to benefit ratepayers. Such transition costs should not be considered in the calculation of rates. ¶145.

A major capital facility that has entered service but is removed from service for regulatory reasons and that is expected to re-enter service during the period in which rates will be effective is not properly classified as construction work in progress, but may be considered as an element of rate base. ¶¶155-157.

Although a rate base calculated on the basis of an average of monthly averages often produces the best match between revenues and expenses, end-of-period calculation may be used when a regulated company is engaged in a heavy program of expenditures such that its rate base is rising faster than its revenues are expected to rise during the period rates are expected to be in effect. ¶160.

When a regulated company has an actual capital structure consisting entirely of debt, with debt exceeding the book value of the company's assets, the Commission may use a hypothetical capital structure for ratemaking purposes. The Commission may impute a capital structure that provides an incentive for the company to create an equity component in its capital structure, that neither rewards the company for decisions that put it in financial jeopardy nor improperly charges ratepayers for costs the company is not incurring. ¶¶199-201.

Use of parent companies' capital structure for setting rates of a wholly-owned regulated company that has no equity in its capital structure is improper when the parent companies have a capital structure exceeding 85% equity, when their equity structure is not relevant to the financial health of the regulated company, when the owners' decisions created the regulated company's unhealthy capital structure, and when the parent companies do not guarantee the financial health of the regulated company. ¶188.

While the Commission does not "set" the cost of equity, but instead identifies the market's demanded return for providing capital, a company's actual capital structure is determined by its board of directors. If a regulated company's capital structure is unhealthy, the Commission will set an appropriate hypothetical capital structure based on a balancing of risks and benefits and will not establish capital structure based on market requirements. ¶192

The Commission consistently accepts use of the discounted cash flow (DCF) methodology to determine required returns on equity, but will consider use of other methodologies, such as the capital asset pricing model (CAPM), when necessary to refine a broad determination under the DCF methodology. ¶222-224.

It is inappropriate to use a hypothetical cost of debt that substantially exceeds the actual debt cost experienced by a regulated company in the absence of a determination that the company will be required to pay the higher rates during the period rates are expected to be in effect.

Throughput for purposes of calculating a pipeline's revenue requirement should match as closely as possible the anticipated throughput during the period when rates are expected to be effective. Use of actual experience is improper when the experience includes a level of interruptions that are not expected to represent experience during the term rates are expected to be effective. Use of throughput calculations based on full-pressure operations is improper when operations at full pressure are not expected throughout the period of the rates. ¶66.

An adjustment mechanism to reduce rates for pipeline transportation on the sole basis of increased throughput is inappropriate when the regulated company's operations are subject to multiple variables. Instead, the company should be directed to file for rate review when costs and operations are expected to be more stable. ¶¶255-259.

Classification of expenditures as capital or expense items is not based solely on the label of "maintenance," as major maintenance items reflect investments of a capital nature that will produce benefits over an extended period that should be capitalized or amortized over a period longer than one year. ¶¶299-304.

When records for test year expenditures are not provided, but the Commission believes that the character of expenditures is consistent between the test period and the budget for the next one-year period, the Commission may categorize test-year expenses based upon the characterizations of budget-year proposals. ¶¶299-302.

Contentions of increased maintenance expenditures that are not supported by information as to the nature of projects, their costs, their character, whether they represent an increase from test year expenditures, or other specific information, do not support a need for additional funding. ¶¶303-304.

When the Commission determines that any temporary rates be subject to refund if the Commission finds that the ongoing level of necessary rates is lower than the level of temporary rates approved, the Commission may order a refund of excess collections.

The Commission may establish reporting requirements for relevant future events when the events are relevant to the company's financial and operating performance. ¶¶351-352.

When a company fails to present an adequate case before the Commission, the Commission may require that it comply with filing requirements that will improve the likelihood that the record in the company's next rate proceeding will be sufficient for the Commission to make an advised decision.